THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2603 of 2006

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the order passed by the first respondent in Rc.No.90/2000-B dated 12.10.2001 as confirmed by the A.P. Cooperative Tribunal at Warangal in C.T.A.No.9 of 2001 dated 15.12.2005 as arbitrary and illegal.

It appears, petitioner is the Ex-President of Large Sized Cooperative Society, Venkatapalli-Saidpoor, Huzurabad mandal, Karimnagar district. It seems that pursuant to the enquiry conducted under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act'), surcharge proceedings under Section 60(1) of the Act were initiated against the petitioner vide order dated 12.10.2001 directing him to pay an amount of Rs.1,15,944-00 ps. Aggrieved by the same, petitioner carried the matter in appeal before the A.P. Cooperative Tribunal, Warangal vide C.T.A.No.9 of 2001. The Tribunal, by order dated 15.12.2005 confirmed the order passed by the surcharge authority. Aggrieved by the same, the present writ petition is filed.

It appears that an enquiry under Section 51 of the Act was conducted and the enquiry officer in his report seems to have observed that A.Linga Reddy (Secretary) was absent for a period of 364 days during the period from 1.1.1997 to 31.3.2000 and for the said period, the President-petitioner herein had passed bills of A.Linga Reddy relating to his arrears, pay and allowances to the tune of Rs.1,15,944-00. On the basis of the said enquiry report, proceedings under Section 60 of the Act were initiated against the petitioner and the surcharge authority noted the contents in the enquiry officer's report and the written statement filed by the petitioner and passed orders under Section 60(1) of the Act read with G.O.Ms.No.34 dated 16.1.1989 fixing liability on the petitioner to a tune of Rs.1,15,944-00 along

with interest thereon @ 18% per annum. Aggrieved by the same, petitioner carried the matter in appeal before the A.P. Cooperative Tribunal, Warangal. The appellate authority also simply noticed that:

> "The impugned order of surcharge was passed against the appellant after a reasonable opportunity was given to the appellant. The appellant did not prove during the inquiry under Section 60(1) of the Act that he did not authorize or pass the irregular payments in question. On the other hand, he contended that it was the Secretary who was responsible for the payments which he (appellant) allowed to be made. The order purported to have been passed by the Registrar of Cooperative Societies has not been specifically mentioned. Even if there are general orders enabling Secretaries of Societies to draw higher salaries there can be no order entitling a Secretary to draw salary or arrears due to enhancement of salary for the period he was absent from duties, as is the case in this appeal".

and dismissed the appeal upholding the order of surcharge authority.

The learned counsel for petitioner strenuously contended that no enquiry of any kind known to law has been conducted by the surcharge authority and neither any documents were marked nor any witnesses were examined and even the enquiry report purported to have been submitted by the Enquiry Officer under Section 51 of the Act was also not supplied to the petitioner.

Per contra, the learned counsel appearing for the second respondent-society strenuously contended that the petitioner has not raised all these grounds either before the surcharge authority or the appellate authority, therefore, the petitioner is estopped from raising these objections in this writ petition. The learned counsel further contends that may be the liability fastened under surcharge proceedings is only as to the payment of salary to the Secretary for the period he was absent, but nonetheless surcharge proceedings can be initiated against the petitioner in view of Rule 28(4)(b) of the A.P. Cooperative Societies Rules. This is a case where no further enquiry is necessary and the surcharge authority has passed order on the basis of the record available, which was rightly confirmed by the appellate

authority. No ground is made out by the petitioner calling for interference of this Court under Article 226 of the Constitution of India.

The learned Government Pleader appearing for first respondent contended that there is no necessity of supplying copy of enquiry report to the petitioner and it is for the petitioner to file a proper application for obtaining such report. Therefore, the petitioner has no right to complain about non-supplying of enquiry officer's report.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

It is an admitted fact that no documents were marked including the enquiry officer's report and no witnesses who purported to have given evidence during the course of enquiry under Section 51 of the Act were examined before the surcharge authority. The surcharge authority, simply on the basis of enquiry report as well as the written statement, disposed of the case, which was confirmed by the appellate authority.

In this regard, the learned counsel for petitioner drawn attention of the Court to the judgment in **CHALLA SANYASINAIDU v. DEPUTY REGISTRAR OF COOP. SOCIETY, SRIKAKULAM**[1] and submitted that this is a glaring example where principles of natural justice were given a go-bye and no enquiry known to law has been conducted either by the surcharge authority or appellate authority, therefore, both the orders are liable to be set aside.

I am in full agreement with the submissions made by the learned counsel for petitioner. This is a case where the witnesses who purported to have deposed before the Enquiry Officer, were not examined before the surcharge authority and no opportunity was given to the petitioner to cross-examine them and the entire evidence was recorded behind the back of the petitioner. Unless the persons who deposed before the enquiry under Section 51 of the Act are examined in Section 60 proceedings, their

statements cannot form basis to hold the petitioner guilty of the charges. Therefore, the impugned orders are vitiated by law, procedure and principles of natural justice.

Therefore, I am of the opinion that the order passed by the surcharge authority (first respondent) dated 12.10.2001 as confirmed by the appellate authority (A.P. Cooperative Tribunal) in C.T.A.NO.9 of 2003 dated 15.12.2005 are liable to be set aside and accordingly set aside and the matter is remitted back to the first respondent-surcharge authority for fresh consideration of the matter after giving due opportunity to the petitioner and passing appropriate orders as per law.

The writ petition is accordingly allowed. No order as costs.

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C.V.RAMULU, J

Date: 4.1.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2603 of 2006

4.1.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2603 of 2006

Date: 4th January, 2006

Between:

K.V.Narayana Reddy

.. Petitioner

And

The Deputy Registrar of Coop. Societies,
Karimnagar Division, Karimngar district & another.

.. Respondents

and the same is contrary to the very action of the President who marked presence for the secretary A.Linga Reddy.

Except this, the surcharge authority has not recorded any statement of any of the persons concerned including the enquiry officer who submitted report under Section 51 of the Act, nor any documents were marked or any other witnesses were examined.

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[1] 1998(1) ALD 455 (DB)